

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

000001

RECEIVED

IN THE MATTER OF:

THE OHIO INDUSTRIAL TRADING COMPANY,
an Ohio Joint Venture Partnership;

JOHN PAUL ENTERPRISES, INC.,
Individually and as a Joint Venture
Partner in THE OHIO INDUSTRIAL
TRADING COMPANY; and

FOUNDRY SALES & SUPPLY, INC.,
Individually and as a Joint Venture
Partner in THE OHIO INDUSTRIAL
TRADING COMPANY,

Respondents.

Docket No. 5-TSCA-96-002

EPA Region 5 Records Ctr.



247393

FIRST AMENDED COMPLAINT
and
NOTICE OF OPPORTUNITY FOR HEARING

I

COMPLAINT

GENERAL ALLEGATIONS

1. This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and Sections 22.01(a)(5) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.01(a)(5), 22.13.

2. The Director, Waste, Pesticides and Toxics Division, Region 5, United States Environmental Protection Agency ("U.S. EPA"), is, by lawful delegation, the Complainant.

3. One Respondent is The Ohio Industrial Trading Company (hereinafter "Respondent OITC" or collectively with the other Respondents as "Respondents"), which is and was, at all times relevant to this Complaint, a joint venture partnership registered with the Ohio Secretary of State.

4. One Respondent is John Paul Enterprises, Inc. (hereinafter "Respondent JPE" or collectively with the other Respondents as "Respondents"), which is and was, at all times relevant to this Complaint, a corporation organized under the laws of the State of Ohio.

5. One Respondent is Foundry Sales & Supply, Inc. (hereinafter "Respondent FSS" or collectively with the other Respondents as "Respondents"), which is and was, at all times relevant to this Complaint, a corporation organized under the laws of the State of Ohio.

6. Respondent OITC was registered with the Ohio Secretary of State as a business using a fictitious business name on August 31, 1988.

7. As registered with the Ohio Secretary of State on August 31, 1988, Respondent OITC was a partnership between Respondent JPE and Respondent FSS.

8. On June 17, 1991, Respondent OITC was a joint venture partnership between Respondent JPE and Respondent FSS.

9. The Polychlorinated Biphenyls ("PCBs") Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978 (43 *Fed. Reg.* 7150). The PCBs Manufacturing, Processing, Distribution in Commerce and Use regulations ("PCB Rule") were lawfully promulgated on May 31, 1979 (44 *Fed. Reg.* 31514), and incorporated the disposal and marking regulations. The PCB Rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

10. At all times relevant to this Complaint, Respondent OITC was a "person" as defined at 40 C.F.R. § 761.3.

11. At all times relevant to this Complaint, Respondent JPE was a "person" as defined at 40 C.F.R. § 761.3.

12. At all times relevant to this Complaint, Respondent FSS was a "person" as defined at 40 C.F.R. § 761.3.

13. At all times relevant to this Complaint, the Respondents were subject to the prohibitions of the PCB Rule as set forth at 40 C.F.R. Part 761.

14. The Respondents were, at all times relevant to this Complaint, the owners and operators of a facility located at 400 Detrick Street, Dayton, Montgomery County, Ohio ("the facility"), known as the GHR Foundry.

15. At all times relevant to this Complaint, the facility consisted, *inter alia*, of several buildings, including buildings known as the "Office Building," the "H-Building," and the "G-Building."

16. On June 17, 1991, representatives of the U.S. EPA inspected the facility to determine compliance with the PCB Rule.

17. At the time of the inspection, Respondents had two "PCB Transformers," as defined at 40 C.F.R. § 761.3, located outside between the Office Building and the H-Building.

18. At the time of the inspection, Respondents' two PCB Transformers located outside between the Office Building and the H-Building were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

19. At the time of the inspection, Respondents had a PCB Transformer," as defined at 40 C.F.R. § 761.3, located inside the H-Building.

20. At the time of the inspection, Respondents had two transformers that each were "PCB-Contaminated Electrical Equipment," as defined at 40 C.F.R. § 761.3, located inside the H-Building.

21. At the time of the inspection, Respondents' PCB Transformer and PCB-Contaminated Electrical Equipment located inside the H-Building were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

22. At the time of the inspection, Respondents had a "PCB Transformer," as defined at 40 C.F.R. § 761.3, located behind the H-Building.

23. At the time of the inspection, Respondents had six PCB "Large Low Voltage Capacitors," as defined at 40 C.F.R. § 761.3, located behind the H-Building.

24. At the time of the inspection, Respondents' PCB Transformer and six PCB Large Low Voltage Capacitors located behind the H-Building were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

25. At the time of the inspection, Respondents had at least two transformers that each were "PCB-Contaminated Electrical

Equipment," as defined at 40 C.F.R. § 761.3, located inside the G-Building.

26. At the time of the inspection, Respondents' PCB Contaminated Electrical Equipment located inside the G-Building were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

27. At the time of the inspection, Respondents had nine PCB "Large High Voltage Capacitors," as defined at 40 C.F.R. § 761.3, located in the basement of the Office Building.

28. At the time of the inspection, Respondents' nine PCB Large High Voltage Capacitors located in the basement of the Office Building were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

29. At the time of the inspection, Respondents had 37 PCB "Large Low Voltage Capacitors," as defined at 40 C.F.R. § 761.3, located inside the G-Building in an area called the "PCB Storage Area."

30. At the time of the inspection, Respondents' 37 PCB Large Low Voltage Capacitors located inside the G-Building in an area called the "PCB Storage Area" were each a "PCB Article" and a "PCB Item," as defined at 40 C.F.R. § 761.3.

31. At the time of the inspection, Respondents had 12 55-gallon drums filled with PCB oil at a concentration greater than 500 parts per million ("ppm") located inside the G-Building in an area called the "PCB Storage Area."

32. At the time of the inspection, Respondents' 12 55-gallon drums located inside the G-Building in an area called the "PCB Storage Area" were each a "PCB Container," as defined at 40 C.F.R. § 761.3.

33. At the time of the inspection, Respondents' 12 PCB Containers located inside the G-Building in an area called the "PCB Storage Area" were each a "PCB Item," as defined at 40 C.F.R. § 761.3.

34. At the time of the inspection, each of Respondents' PCB Items was in storage for disposal.

35. As a result of the June 17, 1991, inspection, the Complainant has determined that Respondent has violated the Federal regulations regarding the recordkeeping, storage, and marking requirements of the PCB Rule, 40 C.F.R. Part 761, and thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT I

36. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

37. The PCB Rule at 40 C.F.R. § 761.65(b) requires that PCBs and PCB Items stored for disposal be placed in an area with adequate roof, walls, and continuous floor and curbing constructed from smooth impervious materials with no drain valves, expansion joints, sewer lines or other openings.

38. At the time of the inspection, Respondents' two PCB Transformers that were located outside between the Office Building and the H-Building were stored for disposal in a storage area without an adequate roof, adequate walls, continuous flooring and continuous curbing.

39. Respondents' failure to place their two PCB Transformers in a proper storage area constitutes a violation of 40 C.F.R. § 761.65(b) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT II

40. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

41. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

42. At the time of the inspection, Respondents' storage area located outside between the Office Building and the H-Building was not marked with the M_L label.

43. Respondents' failure to mark the storage area located outside between the Office Building and the H-Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT III

44. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

45. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

46. At the time of the inspection, Respondents' two PCB Transformers located outside between the Office Building and the

H-Building did not bear the date of when they were placed into storage for disposal.

47. Respondents did not date their two PCB Transformers located outside between the Office Building and the H-Building when they were placed into storage for disposal.

48. Respondents' failure to date their two PCB Transformers when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT IV

49. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

50. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

51. At the time of the inspection, Respondents' storage area located inside the H-Building was not marked with the M_L label.

52. Respondents failure to mark the storage area inside the H-Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT V

53. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

54. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

55. At the time of the inspection, Respondents' PCB Transformer located inside the H-Building was not marked with the M_L label.

56. Respondents' failure to mark the PCB Transformer located inside the H-Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT VI

57. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

58. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

59. At the time of the inspection, Respondents' PCB Transformer and two PCB-Contaminated Transformers located inside the H-Building did not bear the date of when they were placed into storage for disposal.

60. Respondents did not date their PCB Transformer and two PCB-Contaminated Transformers located inside the H-Building when they were placed into storage for disposal.

61. Respondents' failure to date their PCB Transformer and two PCB-Contaminated Transformers when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT VII

62. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

63. The PCB Rule at 40 C.F.R. § 761.65(b) requires that PCBs and PCB Items stored for disposal be placed in an area with adequate roof, walls, and continuous floor and curbing

constructed from smooth impervious materials with no drain valves, expansion joints, sewer lines or other openings.

64. At the time of the inspection, Respondents' PCB Transformer and six PCB Large Low Voltage Capacitors that were located behind the H-Building were stored for disposal in a storage area without continuous curbing.

65. Respondents' failure to place their PCB Transformer and six PCB Large Low Voltage Capacitors in a proper storage area constitutes a violation of 40 C.F.R. § 761.65(b) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT VIII

66. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

67. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

68. At the time of the inspection, Respondents' storage area located behind the H-Building was not marked with the M_L label.

69. Respondents' failure to mark the storage area located behind the H-Building with the M₁ label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT IX

70. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

71. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

72. At the time of the inspection, Respondents' PCB Transformer and six PCB Large Low Voltage Capacitors located behind the H-Building did not bear the date of when they were placed into storage for disposal.

73. Respondents did not date their PCB Transformer and six PCB Large Low Voltage Capacitors located behind the H-Building when they were placed into storage for disposal.

74. Respondents' failure to date their PCB Transformer and six PCB Large Low Voltage Capacitors when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT X

75. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

76. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

77. At the time of the inspection, Respondents' six PCB Large Low Voltage Capacitors located behind the H-Building were not marked with the M_L label.

78. Respondents' failure to mark the six PCB Large Low Voltage Capacitors located behind the H-Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XI

79. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

80. The PCB Rule at 40 C.F.R. § 761.65(b) requires that PCBs and PCB Items stored for disposal be placed in an area with adequate roof, walls, and continuous floor and curbing

constructed from smooth impervious materials with no drain valves, expansion joints, sewer lines or other openings.

81. At the time of the inspection, Respondents' two PCB-Contaminated Transformers that were located inside the G-Building were stored for disposal in a storage area without continuous curbing.

82. Respondents' failure to place their two PCB-Contaminated Transformers in a proper storage area constitutes a violation of 40 C.F.R. § 761.65(b) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XII

83. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

84. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

85. At the time of the inspection, Respondents' storage area located inside the G-Building was not marked with the M_L label.

86. Respondents' failure to mark the storage area located inside the G-Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XIII

87. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

88. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

89. At the time of the inspection, Respondents' two PCB-Contaminated Transformers located inside the G-Building did not bear the date of when they were placed into storage for disposal.

90. Respondents did not date their two PCB-Contaminated Transformers located inside the G-Building when they were placed into storage for disposal.

91. Respondents' failure to date their two PCB-Contaminated Transformers when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XIV

92. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

93. The PCB Rule at 40 C.F.R. § 761.65(b) requires that PCBs and PCB Items stored for disposal be placed in an area with adequate roof, walls, and continuous floor and curbing constructed from smooth impervious materials with no drain valves, expansion joints, sewer lines or other openings.

94. At the time of the inspection, Respondents' nine PCB Large High Voltage Capacitors that were located in the basement of the Office Building were stored for disposal in a storage area without continuous curbing.

95. Respondents' failure to place their nine PCB Large High Voltage Capacitors in a proper storage area constitutes a violation of 40 C.F.R. § 761.65(b) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XV

96. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

97. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage

Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

98. At the time of the inspection, Respondents' storage area located in the basement of the Office Building was not marked with the M_L label.

99. Respondents' failure to mark the storage area located in the basement of the Office Building with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XVI

100. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

101. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

102. At the time of the inspection, Respondents' nine PCB Large High Voltage Capacitors located in the basement of the Office Building did not bear the date of when they were placed into storage for disposal.

103. Respondents did not date their nine PCB Large High Voltage Capacitors located in the basement of the Office Building when they were placed into storage for disposal.

104. Respondents' failure to date their nine PCB Large High Voltage Capacitors when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XVII

105. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

106. The PCB Rule at 40 C.F.R. § 761.65(c)(8) requires that PCB Articles and PCB Containers be dated on the article or container when they are placed in storage.

107. At the time of the inspection, Respondents' 37 PCB Large Low Voltage Capacitors and 12 PCB Containers located inside the G-Building in an area called the "PCB Storage Area" did not bear the date of when they were placed into storage for disposal.

108. Respondents did not date their 37 PCB Large Low Voltage Capacitors and 12 PCB Containers located inside the G-Building in an area called the "PCB Storage Area" when they were placed into storage for disposal.

109. Respondents' failure to date their 37 PCB Large Low Voltage Capacitors and 12 PCB Containers when they were placed into storage for disposal constitutes a violation of 40 C.F.R. § 761.65(c)(8) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XVIII

110. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

111. The PCB Rule at 40 C.F.R. § 761.40(a) requires that all PCB Containers, PCB Transformers, PCB Large High Voltage Capacitors, PCB Article Containers and each storage area used to store PCBs and PCB Items for disposal be marked with an M_L label.

112. At the time of the inspection, 32 of Respondents' 37 PCB Large Low Voltage Capacitors located inside the G-Building in an area called the "PCB Storage Area" were not marked with the M_L label.

113. Respondents' failure to mark 32 of their 37 PCB Large Low Voltage Capacitors located inside the G-Building in an area called the "PCB Storage Area" with the M_L label constitutes a violation of 40 C.F.R. § 761.40(a) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XIX

114. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

115. The PCB Rule at 40 C.F.R. § 761.30(a)(1)(vi) requires that, as of December 1, 1985, all PCB Transformers in use or storage for reuse be registered with fire response personnel with primary jurisdiction (that is, the fire department or fire brigade which would normally be called upon for the initial response to a fire involving the equipment).

116. The PCB Transformer located, at the time of the inspection, inside the H-Building was in use or storage for reuse at the facility from before October 1988 through and including April 1991.

117. The PCB Transformer located, at the time of the inspection, behind the H-Building was in use or storage for reuse at the facility from before October 1988 through and including April 1991.

118. At the time of the inspection, Respondents' had not registered any PCB Transformers with fire response personnel with primary jurisdiction.

119. Respondents' failure to register their PCB Transformers with fire response personnel with primary jurisdiction constitutes a violation of 40 C.F.R. § 761.30(a)(1)(vi) and Section 15 of TSCA, 15 U.S.C. § 2614.

COUNT XX

120. The General Allegations of the Complaint are incorporated by reference as though set forth here in full.

121. The PCB Rule at 40 C.F.R. § 761.205(a)(2) requires that all generators of PCB waste who first engage in PCB waste handling activities after February 5, 1990, shall notify U.S. EPA by filing U.S. EPA Form 7710-53 with U.S. EPA prior to engaging in PCB waste handling activities.

122. Respondents first engaged in PCB waste handling activities after February 5, 1990.

123. At the time of the inspection, Respondents were engaging in PCB waste handling activities.

124. At the time of the inspection, Respondent was a "Generator of PCB waste" as defined at 40 C.F.R. § 761.3.

125. At the time of the inspection, Respondents had not filed Form 7710-53 with U.S. EPA.

126. Respondents' engagement in PCB waste handling activities prior to their filing of Form 7710-53 constitutes a violation of 40 C.F.R. § 761.205(a)(2) and Section 15 of TSCA, 15 U.S.C. § 2614.

II

PROPOSED CIVIL PENALTY

Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA. Based upon the facts alleged in Part I of this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as the Respondents' history of prior such violations of TSCA, the degree of culpability, and such other matters as justice may require, Complainant proposes that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

COUNT I

Improper Storage (Outside).....\$3,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(b)

COUNT II

Improper Marking (Outside).....\$500

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT III

Improper Storage (Outside).....\$1,000

15 U.S.C. § 2614

40 C.F.R. § 761.65(c)(8)

COUNT IV

Improper Marking (H-Building).....\$13,000

15 U.S.C. § 2614

40 C.F.R. § 761.40(a)

COUNT V

Improper Marking (H-Building).....\$13,000

15 U.S.C. § 2614

40 C.F.R. § 761.40(a)

COUNT VI

Improper Storage (H-Building).....\$6,000

15 U.S.C. § 2614

40 C.F.R. § 761.65(c)(8)

COUNT VII

Improper Storage (behind H-Building).....\$13,000

15 U.S.C. § 2614

40 C.F.R. § 761.65(b)

COUNT VIII

Improper Marking (behind H-Building).....\$3,000

15 U.S.C. § 2614

40 C.F.R. § 761.40(a)

COUNT IX

Improper Marking (behind H-Building).....\$6,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(c)(8)

COUNT X

Improper Marking (behind H-Building).....\$500

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT XI

Improper Storage (G-Building).....\$13,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(b)

COUNT XII

Improper Marking (G-Building).....\$13,000

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT XIII

Improper Storage (G-Building).....\$6,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(c)(8)

COUNT XIV

Improper Storage (Office Building).....\$3,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(b)

COUNT XV

Improper Marking (Office Building).....\$500

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT XVI

Improper Storage (Office Building).....\$1,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(c)(8)

COUNT XVII

Improper Storage (G-Building "PCB Area").....\$6,000

15 U.S.C. § 2614
40 C.F.R. § 761.65(c)(8)

COUNT XVIII

Improper Marking (G-Building "PCB Area").....\$500

15 U.S.C. § 2614
40 C.F.R. § 761.40(a)

COUNT XIX

Improper Use.....\$13,000

15 U.S.C. § 2614
40 C.F.R. § 761.30(a)(1)(vi)

COUNT XX

Improper Waste Disposal.....\$25,000

15 U.S.C. § 2614
40 C.F.R. § 761.205(a)(2)

TOTAL PROPOSED CIVIL PENALTY.....\$140,000

The Respondents may pay this penalty by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

U.S. EPA, Region 5
P.O. Box 70753
Chicago, Illinois 60673

A copy of the check shall be sent to:

Branch Secretary
Pesticides and Toxics Branch
U.S. EPA, Region 5 (DRT-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

Complainant derived the penalties proposed in Part II of this Complaint by applying the factors enumerated above to the particular allegations that constitute the violations charged in this action. The reasoning for each assessment is delineated in the "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act," 45 *Fed. Reg.* 59770 (September 10, 1980); and the "Polychlorinated Biphenyls (PCB) Penalty Policy," April 9, 1990 (Notice of Availability, 72 *Fed. Reg.* 13955 (April 13, 1990)).

III

OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., you have the right to request a hearing regarding

the proposed Complaint, to contest any material fact contained in this Complaint, and/or to contest the appropriateness of the amount of the proposed penalty. Any hearing that you request will be held and conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

If you wish to avoid being found in default, you must file a written Answer within 20 days of service of this Complaint with the Regional Hearing Clerk, whose address is:

Regional Hearing Clerk
U.S. EPA, Region 5 (R-19J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondents have no knowledge as to particular factual allegations in the Complaint. The Answer should also state:

1. The circumstances or arguments that you allege constitute the grounds of defense;
2. The facts that you intend to place at issue; and
3. Whether you request a hearing.

Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations.

A copy of this Answer and any subsequent documents filed in this action should also be sent to:

Timothy J. Chapman
Assistant Regional Counsel
U.S. EPA, Region 5 (C-29A)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Mr. Chapman may be telephoned at (312) 886-6829.

If you fail to file a written Answer, with or without a Request for Hearing, within 20 days of your receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your right to a hearing under TSCA. The civil penalty proposed in this Complaint shall then become due and payable without further proceedings 60 days after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17(a). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. U.S. EPA will impose a late payment handling charge of \$15 after thirty 30 days, with an additional charge of \$15 for each subsequent 30-day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six percent (6%) per annum penalty on any principal amount not paid within 90

days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

IV

SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may request an informal conference in order to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please write to the attorney whose name and address appear in Section III of this Complaint.

Your request for an informal settlement conference does not extend the 20 day period during which you must submit a written Answer and Request for Hearing. You may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference shall be embodied in a written "Consent Agreement and Consent Order" issued by the Regional Administrator.

The issuance of a Consent Agreement and Consent Order shall constitute a waiver of your right to request a hearing on any matter stipulated matter in the Consent Agreement.

Margaret McCue for

Norman R. Niedergang, Director
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5 (D-8J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dated: 5/3/96

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 1996, the original of the foregoing First Amended Complaint And Notice Of Opportunity For Hearing was hand delivered to the Regional Hearing Clerk, Region 5, U.S. EPA, and that a correct copy was mailed certified mail, return receipt requested, to each Respondent by placing such copy in the custody of the United States Postal Service addressed as follows:

For THE OHIO INDUSTRIAL TRADING COMPANY:

Managing or General Partner
The Ohio Industrial Trading Company
525 Twinning Drive
Dayton, Ohio 45431
[Certified Mail # Z 441 003 618]

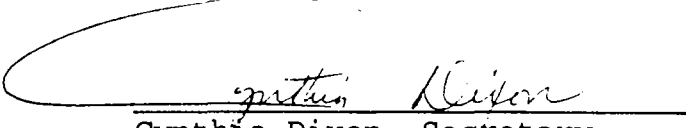
And by service upon one or more of its partners as set forth below.

For JOHN PAUL ENTERPRISES, INC.

James R. Kirkland
Registered Agent for:
John Paul Enterprises, Inc.
111 West First Street, Suite 518
Dayton, Ohio 45402-1131
[Certified Mail # Z 441 003 620]

For FOUNDRY SALES & SUPPLY, INC.

2112 East Ohio Service Corporation
Registered Agent for:
Foundry Sales & Supply, Inc.
2112 East Ohio Building
Cleveland, Ohio 44114
[Certified Mail # Z 441 003 622]


Cynthia Dixon, Secretary
Office of Regional Counsel
U.S. EPA, Region 5